

LEGISLATURE OF THE STATE OF IDAHO  
Sixty-first Legislature First Regular Session - 2011

IN THE SENATE

SENATE BILL NO. 1185, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO WORKER'S COMPENSATION LAW; AMENDING SECTION 72-301, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SECURITY FOR PAYMENT OF COMPENSATION, TO REVISE TERMINOLOGY AND TO PROVIDE PROVISIONS RELATING TO A PUBLIC EMPLOYER APPLYING FOR APPROVAL TO BECOME SELF-INSURED; AMENDING CHAPTER 3, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-301A, IDAHO CODE, TO PROVIDE DEFINITIONS; AMENDING CHAPTER 3, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-301B, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO A SERVICE FUND; AMENDING CHAPTER 3, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-301C, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO PROHIBITED PECUNIARY INTERESTS; AMENDING CHAPTER 3, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-301D, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO THE RECOVERY OF CERTAIN FUNDS; AMENDING CHAPTER 3, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-301E, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO THE LIQUIDATION OF A FUND; AMENDING CHAPTER 3, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-301F, IDAHO CODE, TO PROVIDE FOR RULES; AMENDING CHAPTER 3, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-301G, IDAHO CODE, TO PROVIDE FOR PENALTIES; AMENDING CHAPTER 3, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-301H, IDAHO CODE, TO PROVIDE FOR APPLICATION OF LAWS; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-301, Idaho Code, be, and the same is hereby amended to read as follows:

72-301. SECURITY FOR PAYMENT OF COMPENSATION. Every employer shall secure the payment of compensation under this law in one (1) of the following ways:

(1) By insuring and keeping insured with a policy of ~~workmen's~~ worker's compensation insurance as defined ~~by~~ in section 41-506(1)(d), Idaho Code, the payment of compensation with any ~~surety~~ insurer, as defined in section 41-103, Idaho Code, authorized by the director of the department of insurance to transact such insurance, provided, that every public employer shall insure its liability for payment of compensation with the state insurance fund unless such fund shall refuse to accept the risk when the application for insurance is made; or

(2) An employer, other than a public employer subject to the provisions of subsection (3) of this section, may become self-insured by applying for and obtaining the approval of the industrial commission, and by depositing and maintaining with the commission security satisfactory to the commission securing the payment by said employer of compensation according to the terms of this law. Such security may consist of a surety bond or guaranty contract

1 with any company authorized to transact surety insurance in Idaho. The com-  
 2 mission shall adopt rules ~~and regulations~~ governing the qualifications of  
 3 self-insured employers, the nature and amount of security to be deposited  
 4 with the commission, and the conditions under which an employer may continue  
 5 to be self-insured; or

6 (3) Upon the passage and approval of this act, the provisions of this  
 7 subsection shall apply; provided however, that the provisions of this sub-  
 8 section shall not apply to a public employer that has been approved to be  
 9 self-insured on or before the passage and approval of this act.

10 A public employer, as defined in section 72-301A, Idaho Code, may become  
 11 self-insured by applying for and obtaining the approval of the industrial  
 12 commission. In addition to other requirements provided for in this chapter,  
 13 a public employer, applying to the commission for approval to be self-in-  
 14 sured shall submit to the commission, on a form or forms furnished by the com-  
 15 mission, the following:

16 (a) An actuarial study prepared by a qualified actuary determining ad-  
 17 equiate rates for the self-funded plan based upon a fifty percent (50%)  
 18 confidence level;

19 (b) A self-insurance feasibility study including, but not necessarily  
 20 limited to, the following:

21 (i) An analysis of the advantages and disadvantages of self-in-  
 22 surance as compared to current coverage;

23 (ii) A summary of the historical worker's compensation claims  
 24 loss experience for a minimum of the three (3) most recent full  
 25 policy years, as well as the current policy year through the last  
 26 completed quarter under the current policy at the time the appli-  
 27 cation is submitted to the commission; and

28 (c) A business plan to include, but not necessarily limited to:

29 (i) The cost of excess insurance, the anticipated self-insured  
 30 retention and the policy limits;

31 (ii) How the self-insured employer will administer claims and the  
 32 estimated cost; and

33 (iii) How the self-insured employer will replace the loss control  
 34 services provided by the state insurance fund and the estimated  
 35 cost.

36 The commission may, at its discretion, require other relevant documen-  
 37 tation and information from a public employer relating to an application  
 38 made pursuant to this section.

39 No ~~surety insurer~~ shall be permitted to transact ~~workmen's~~ worker's  
 40 compensation insurance covering the liability of employers under this law  
 41 unless it shall have been authorized to do business under the laws of this  
 42 state and until it shall have received the approval of the commission. To the  
 43 end that the ~~workmen~~ workers secured under this ~~act~~ law shall be adequately  
 44 protected, the commission shall require such ~~sureties insurer~~ to deposit  
 45 and maintain with the treasurer of the state, money or bonds of the United  
 46 States or of this state, or interest-paying bonds when they are at or above  
 47 par, or any other state of the United States or the District of Columbia, or  
 48 the bonds of any county or municipal corporation of this or any other state  
 49 of the United States or the District of Columbia in an amount equal to the  
 50 total amounts of all outstanding and unpaid compensation awards against such

1 surety insurer. In lieu of such money or bonds the commission may allow or  
 2 require such surety insurer to file or maintain with the treasurer of the  
 3 state a surety bond of some company or companies authorized to do business  
 4 in this state for and in the amounts equaling the total unpaid compensation  
 5 awards against such surety insurer. The approval by the commission of any  
 6 surety insurer or self-insured employer may be withdrawn if it shall appear  
 7 to the commission that ~~workmen~~ workers secured thereby under this law are not  
 8 fully protected.

9 SECTION 2. That Chapter 3, Title 72, Idaho Code, be, and the same is  
 10 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 11 ignated as Section 72-301A, Idaho Code, and to read as follows:

12 72-301A. DEFINITIONS. As used in this act:

13 (1) "Administrator" means a person employed by the public employer to  
 14 administer a public employer self-funded plan.

15 (2) "Beneficiary" means any individual entitled, under the self-funded  
 16 plan, to payment by the plan of any part of a claim.

17 (3) "Excess surplus" means that portion of any surplus that is in excess  
 18 of the amount of surplus the actuary deems prudent.

19 (4) "Fund," "internal service fund," or "service fund" means a fund es-  
 20 tablished under a public employer self-funded plan for receipt of contri-  
 21 butions of employers and payment of or with respect to worker's compensa-  
 22 tion claims and, at the employer's discretion, other costs of operating the  
 23 self-funded plan.

24 (5) "Person" means any individual, corporation, association, firm,  
 25 syndicate, organization or other entity.

26 (6) "Public employer" means any city, county or political subdivision  
 27 of this state including, but not limited to: counties; school districts;  
 28 highway districts; port authorities; instrumentalities of counties, county  
 29 hospitals, cities or any political subdivision created under the laws of the  
 30 state of Idaho.

31 (7) "Public employer self-funded plan" or "public employer plan" means  
 32 any public employer self-funded plan approved by the commission and under  
 33 which payment for any worker's compensation claim of an employee is, or is  
 34 to be, regularly provided for or promised from funds created or maintained  
 35 in whole or in part by contributions or payments thereto by a public employer  
 36 and not otherwise covered by insurance.

37 (8) "Qualified actuary" means an actuary who is a fellow of the casualty  
 38 actuarial society (FCAS) or who is an associate of the casualty actuarial so-  
 39 ciety (ACAS).

40 SECTION 3. That Chapter 3, Title 72, Idaho Code, be, and the same is  
 41 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 42 ignated as Section 72-301B, Idaho Code, and to read as follows:

43 72-301B. SERVICE FUND REQUIRED. A public employer, as defined in sec-  
 44 tion 72-301A, Idaho Code, that applies for and obtains the approval of the  
 45 industrial commission to provide a self-funded plan pursuant to this act,  
 46 shall establish an internal service fund for the receipt of contributions of  
 47 employer(s) and payment of or with respect to worker's compensation claims,

1 retention of reserves and, at the employer's discretion, other costs of op-  
2 erating the self-funded plan. Such fund shall be managed in accordance with  
3 the provisions of this act and in accordance with commission rules.

4 SECTION 4. That Chapter 3, Title 72, Idaho Code, be, and the same is  
5 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
6 ignated as Section 72-301C, Idaho Code, and to read as follows:

7 72-301C. PROHIBITED PECUNIARY INTERESTS IN PLAN MANAGEMENT. No admin-  
8 istrator or other person having responsibility for the management of a pub-  
9 lic employer self-funded plan or the investment or other handling of plan  
10 funds shall:

11 (1) Receive directly or indirectly or be pecuniarily interested in any  
12 fee, commission, compensation, or emolument, other than salary or other com-  
13 pensation regularly fixed and allowed for services regularly rendered to the  
14 plan, arising out of any transaction to which the service fund is or is to be a  
15 party;

16 (2) Receive compensation as a consultant to the plan while also acting  
17 as an administrator of the plan or while having any responsibility for the  
18 management of the plan; or

19 (3) Have any direct or indirect material pecuniary interest in any loan  
20 or investment of the service fund.

21 SECTION 5. That Chapter 3, Title 72, Idaho Code, be, and the same is  
22 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
23 ignated as Section 72-301D, Idaho Code, and to read as follows:

24 72-301D. RECOVERY OF DEPLETED FUNDS. If after notice and hearing the  
25 commission finds that any public employer self-funded plan service fund has  
26 been depleted by reason of any wrongful or grossly negligent act or omission  
27 of any person, the commission shall transmit a copy of its findings to the  
28 attorney general of this state, who may bring an action in the name of the  
29 people of this state, or intervene in any action brought by or on behalf of  
30 an employer or beneficiary, for the recovery of the amount of such depletion,  
31 for the benefit of the plan service fund.

32 SECTION 6. That Chapter 3, Title 72, Idaho Code, be, and the same is  
33 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
34 ignated as Section 72-301E, Idaho Code, and to read as follows:

35 72-301E. LIQUIDATION OF FUND. (1) Upon termination of approval of a  
36 public employer self-funded plan, the internal service fund shall be liqui-  
37 dated.

38 (2) Liquidation of a solvent public employer self-funded plan shall be  
39 conducted by the public employer under a plan of liquidation in writing filed  
40 with the commission, found by the commission to be fair and equitable to all  
41 persons having a pecuniary interest in the plan, and approved by the com-  
42 mission. Any balance remaining after payment or adequate provision for all  
43 claims and charges against the plan fund shall be disposed of in such manner  
44 as is provided for in the plan of liquidation. Unless under the plan of liq-  
45 uidation liability for all unpaid claims and obligations of the plan fund has

1 been assumed by other financially responsible person or persons, the exis-  
 2 tence of excess surplus funds for such disposition shall not be determined  
 3 prior to expiration of two (2) years after termination of self-insured sta-  
 4 tus.

5 (3) The liquidation of an insolvent public employer self-funded plan  
 6 shall be carried out by the commission.

7 SECTION 7. That Chapter 3, Title 72, Idaho Code, be, and the same is  
 8 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 9 ignated as Section 72-301F, Idaho Code, and to read as follows:

10 72-301F. RULES. (1) The commission shall make reasonable rules neces-  
 11 sary for, or as an aid to, effectuation of any provision of this act. Such  
 12 rules shall include, but not be limited to, the following provisions:

13 (a) Governing the use of one (1) or more internal service funds, such  
 14 fund(s) to be used by the public employer for purposes relating to the  
 15 administration and operation of the self-funded plan, including the re-  
 16 ceipt of contributions, payment of claims and retention of adequate re-  
 17 serves;

18 (b) Governing the keeping of records and accounts and the examination  
 19 of such;

20 (c) Governing the provisions of an annual report; and

21 (d) Governing the termination of approval of a public employer self-  
 22 funded plan.

23 No rule provided for by this section shall extend, modify or conflict  
 24 with any provision of this chapter and the reasonable implications thereof  
 25 nor any of the administrative, statutory or constitutional rights and re-  
 26 sponsibilities of a public agency.

27 (2) Such rules or any amendment thereof, shall be made by the commission  
 28 in accordance with chapter 52, title 67, Idaho Code.

29 SECTION 8. That Chapter 3, Title 72, Idaho Code, be, and the same is  
 30 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 31 ignated as Section 72-301G, Idaho Code, and to read as follows:

32 72-301G. PENALTIES. (1) Any person who violates or causes or induces  
 33 violation of any provision of this chapter or any lawful rule of the com-  
 34 mission issued hereunder, shall be subject to an administrative penalty for  
 35 each violation of not more than one thousand dollars (\$1,000) for an indi-  
 36 vidual and not more than five thousand dollars (\$5,000) for any other entity.  
 37 Such penalty shall be in addition to any penalty that may be imposed under the  
 38 provisions of section 72-319, Idaho Code.

39 (2) Any person who makes a false statement or representation of a mate-  
 40 rial fact, knowing it to be false, or who knowingly fails to disclose a mate-  
 41 rial fact in any application, examination, or statement required under this  
 42 chapter or by lawful rule of the commission hereunder, shall be subject to  
 43 penalty as provided in subsection (4) of this section.

44 (3) Any person who makes a false entry in any book, record, statement,  
 45 or report required by this chapter or lawful rule of the commission there-  
 46 under to be kept by the commission for any public employer self-funded plan,  
 47 with intent to injure or defraud the fund or any beneficiary thereunder, or

1 to deceive any person authorized or entitled to examine the affairs of the  
2 plan, shall be subject to penalty as provided in subsection (4) of this sec-  
3 tion.

4 (4) For each such violation, act or omission referred to in subsections  
5 (2) and (3) of this section, unless greater penalty is provided therefor un-  
6 der any other applicable law, the offender shall upon conviction thereof be  
7 subject to a fine of not more than fifteen thousand dollars (\$15,000) and to  
8 imprisonment for not more than fifteen (15) years, or to both such fine and  
9 imprisonment.

10 SECTION 9. That Chapter 3, Title 72, Idaho Code, be, and the same is  
11 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
12 ignated as Section 72-301H, Idaho Code, and to read as follows:

13 72-301H. APPLICATION OF LAWS. The provisions of section 72-301(3),  
14 Idaho Code, and sections 72-301A, 72-301B, 72-301C, 72-301D, 72-301E,  
15 72-301F and 72-301G, Idaho Code, shall not apply to any self-funded public  
16 employer in existence on or before the passage and approval of this act.

17 SECTION 10. An emergency existing therefor, which emergency is hereby  
18 declared to exist, this act shall be in full force and effect on and after its  
19 passage and approval.